

Before the  
FCC Part 1 Section  
Federal Communications Commission  
Washington, D.C. 20554

OCT 4 5 50 PM '94 sub  
MM Docket No. 94-114

In the Matter of DISC. BY

Amendment of Section 73.202(b), RM-8515  
Table of Allotments,  
FM Broadcast Stations.  
(Ettrick, Virginia)

### NOTICE OF PROPOSED RULE MAKING

Adopted: September 21, 1994; Released: October 3, 1994

Comment Date: November 25, 1994

Reply Comment Date: December 12, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Hoffman Communications, Inc. ("petitioner"), requesting the allotment of Channel 226A to Ettrick, Virginia, as the community's first local aural transmission service. Petitioner states that it will apply for the channel if allotted.

2. In support of its proposal, petitioner states that Ettrick is listed in the 1990 U.S. Census as a Census Designated Place ("CDP") with a population of 5,290 persons. In addition, petitioner notes that Ettrick contains numerous residential areas and businesses and is the home of Virginia State University.

3. Section 307(b) of the Communications Act of 1934, as amended, requires the Commission to allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. As a general rule, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status as a community for allotment purposes. Although Ettrick is listed as a CDP in the 1990 U.S. Census, this fact alone does not qualify Ettrick as a community for allotment purposes.<sup>1</sup> Therefore, petitioner should present the Commission with sufficient information to demonstrate that Ettrick has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes.<sup>2</sup>

4. We believe the public interest would be served by proposing the allotment of Channel 226A to Ettrick, if it is ultimately found to be a community for allotment purposes, since it provide a first local aural transmission service to the community. Channel 226A can be allotted to Ettrick in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.3 kilometers (7.6 miles) northwest in order to avoid a short-spacing conflict with Station WFOG(FM), Channel 225B, Suffolk, Virginia.<sup>3</sup>

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.
City	Present Proposed
Ettrick, Virginia	--- 226A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **November 25, 1994**, and reply comments on or before **December 12, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

David M. Silverman, Esq.  
Cole, Raywid & Braverman  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006  
(Counsel for petitioner)

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and

<sup>1</sup> According to the U.S. Bureau of Census, CDP's are delineated for the decennial census as the statistical counterparts of incorporated places. CDP's are comprised of densely settled concentrations of population that are identifiable by name, but are not legally incorporated places. Further, their boundaries, which usually coincide with viable features or the boundary of an adjacent incorporated place, have no legal status, nor do these places have officials elected to serve traditional municipal

functions.

<sup>2</sup> See e.g., *Beaver Springs, Pennsylvania*, 4 FCC Rcd 5373 (1989). *Sargent, Nebraska*, 4 FCC Rcd 3933 (1989), *Bartow, Georgia, et al.*, 4 FCC Rcd 6876 (1989), *East Hemet, California, et al.*, 4 FCC Rcd 7895 (1989), and *Ellwood, California*, 50 Fed. Reg. 13031, published April 2, 1985.

<sup>3</sup> The coordinates for Channel 226A at Ettrick are North Latitude 37-17-53 West Longitude 77-32-53.

comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as

they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.